

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|-----------------------|---|------------------------|
| STATE OF OKLAHOMA, |) | |
| A State of the Union, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CR-06-143-L |
| |) | (Texas County Case No. |
| |) | CM-2006-231) |
| BRUCE CLYDE SMITH, |) | |
| An Individual, |) | |
| |) | |
| Defendant. |) | |

ORDER

This matter is before the court on defendant Bruce Clyde Smith's "Notice of Removal" filed on June 8, 2006. The Notice of Removal purports to remove an Oklahoma state criminal prosecution against him to this federal court pursuant to 28 U.S.C. § 1443(2). Initially, the court notes that federal removal jurisdiction is statutory in nature and is to be strictly construed. See Shamrock Oil & Gas v. Sheets, 313 U.S. 100, 108-09 (1941). There is a presumption against removal jurisdiction. Laughlin v. Kmart Corp., 50 F.3d 871, 873 (10th Cir. 1995). Upon review of the Notice of Removal, the court finds that defendant has failed to demonstrate that removal is appropriate under 28 U.S.C. § 1443(2). Section 1443(2) "confers a privilege of removal only upon federal officers or agents and those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights." City of Greenwood, Miss. v.

Peacock, 384 U.S. 808, 824 (1966). Defendant has not alleged or argued that he is a federal officer or assisted a federal officer in executing duties under any federal law providing for equal civil rights. Therefore, § 1443(2) clearly does not provide a basis for removal. As no other statutory basis for removal is cited, the court finds that the case should be remanded to state court from which it was removed.

Accordingly, **this action is REMANDED to the District Court of Texas County, State of Oklahoma, for all further proceedings. The Clerk of the Court is directed to mail a certified copy of this Order to the Clerk of the District Court of Texas County, Oklahoma. The clerk is also directed to mail a copy of this order to James M. Boring, District Attorney for Texas County, Oklahoma, at the address shown on the Certificate of Service.**

It is so ordered this 13th day of June, 2006.



TIM LEONARD
United States District Judge